

LAW OFFICES  
**HALEY, BADER & POTTS**

4350 NORTH FAIRFAX DR., SUITE 900

ARLINGTON, VIRGINIA 22203-1633

TELEPHONE (703) 841-0606

FAX (703) 841-2345

POST OFFICE BOX 19006

WASHINGTON, D.C. 20036-9006

TELEPHONE

(202) 331-0606

**JAMES E. DUNSTAN**  
ADMITTED IN D.C. ONLY

ORIGINAL  
RECEIVED FILE

DEC 16 1992

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

December 16, 1992

Our File No.  
1073-101-63

**Ms. Donna R. Searcy**  
Secretary  
Federal Communications Commission  
Washington, D.C. 20554

Re: MM Docket No. 87-268  
Advanced Television System and Their  
Impact Upon the Existing Broadcast Service

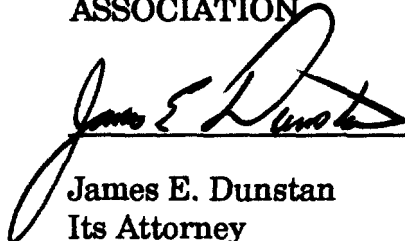
Dear Ms. Searcy:

Submitted herewith on behalf of Community Broadcasters Association, are their **REPLY COMMENTS** on the FCC's Second Further Notice of Proposed Rule Making. Enclosed are an original and nine copies, a copy for each of the Commissioners.

If there are any questions concerning this matter, please communicate directly with this office.

Respectfully submitted,

COMMUNITY BROADCASTERS  
ASSOCIATION

  
James E. Dunstan  
Its Attorney

JED/cp

Enclosure

No. of Copies rec'd  
List A B C D E

044

ORIGINAL  
FILE

RECEIVED

DEC 16 1992

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before The  
**Federal Communications Commission**  
Washington, D.C. 20554

In The Matter Of

Advanced Television Systems  
and Their Impact Upon the  
Existing Television Broadcast  
Service

MM Docket No. 87-268

TO: The Commission

**REPLY COMMENTS OF  
THE COMMUNITY BROADCASTERS ASSOCIATION**

The Community Broadcasters Association ("CBA"), through its attorneys, hereby files its Reply Comments in response to the FCC's Second Further Notice of Proposed Rule Making ("Second FNPRM"), FCC 92-332, released August 14, 1992. In response, CBA submits:

**I. LPTV DISPLACEMENT IS A PROBLEM  
THE COMMISSION CANNOT IGNORE**

In addition to the Comments filed by CBA, a number of commenters reacted to the adverse impact the Commission's proposed table of allotments will have on the local programming delivered by the low power television industry. As commenters pointed out, not only will the Commission's methodological approach decimate low power stations in the crowded Northeast corridor, but needlessly will displace stations in more rural areas such as Anchorage, Alaska, Cullman, Alabama, and Marion, Illinois. See Comments of May & Dunne. These and other low

power stations provide essential local programming targeted to their communities, including increasing emphasis on serving the needs of ethnic minorities. The Commission's decision to simplify its computer programming models by ignoring operating low power stations will extinguish local voices and replace them with two channels of the same programming. CBA continues to maintain that such a trade off not only is bad public policy, it violates the Commission's mandate contained in Section 307(b) of the Communications Act.<sup>1</sup>

CBA urges the Commission to adopt the proposal set forth in its Comments to add a fifth objective to its allocation methodology of protecting presently operating LPTV stations where possible. Surely there is ample brain and computing power available to the FCC to add this objective if it so chose. It should so choose.<sup>2</sup>

## **II. THE COMMISSION SHOULD RECONSIDER ITS DECISION TO ASSIGN ATV CHANNELS ONLY IN THE UHF BAND**

The Comments received in response to the Commission's Second FNPRM by full power stations uniformly oppose complete migration to the UHF band. See Comments of 105 Broadcasters; Comments of 25 Television Stations; Comment of Fisher Broadcasting, Inc.; Comments of GHTV, Inc. Full power stations understandably do

---

<sup>1</sup> Such displacement also flies in the face of Congress' recent granting of must-carry status for certain low power stations. 1992 Cable Act, Section 4 (adding new 47 U.S.C. § 534).

<sup>2</sup> Any delay caused by adding the fifth objective would be welcomed by most of the television industry. A number of commenters urged the Commission to either re-evaluate its allocations entirely (as discussed more fully below), or at least slow the process down to give the television industry time to recover from the current economic recession. Few operating stations appear ready to commit the millions of dollars necessary to build ATV facilities.

not wish to give up their valuable VHF frequencies -- over which propagation characteristics clearly have been defined over decades of real world use -- for UHF allocations involving new technologies and propagation characteristics which as of today remain almost completely theoretical. Full power stations worry that the 55 mile "minimum" coverage area might become the maximum coverage area as the Commission attempts to shoe-horn stations into the UHF band so it can reclaim the VHF band for some unspecified future use. Even the Commission admits that total recapture may not be possible for many years to come, since it cannot make all initial allocations in the UHF band. Seventeen proposed allocations are required in the VHF band. Second FNPRM, ¶ 19. Channels 2,7,8,9,10,11, 12, and 13 will be used at least once in the United States for ATV allotments, and in most cases in the largest markets. So for the interim at least, it is doubtful that a new service will instantly spring up in the VHF band.

Given that the VHF band must be used for initial allocations, CBA submits that the Commission should increase the number of VHF allocations if doing so would save operating low power stations in the UHF band, at least until the VHF ATV stations are forced to migrate up to the UHF band when UHF NTSC signals are recaptured. CBA submits that the incremental increase in VHF ATV allocations will not hamper whatever future use of the VHF band the Commission has in mind (but has yet to articulate), since the upper portion of the VHF band will not be available in major markets during the transition period anyway. Further, the minor negative aspects of using more of the VHF band is far outweighed by the public interest benefits of saving operating local voices.

### III. CONCLUSION

Neither full power nor low power stations appear particularly pleased with the FCC's approach to allocating ATV channels. CBA agrees with those full power stations which argue that the Commission is moving too fast to implement a service for which the technology and market are still nascent. Further, migrating television to the UHF band will cause loss of generations of goodwill developed by VHF stations, as well as extinguishing a growing and important set of local voices, low power stations. CBA therefore urges the Commission to reassess its allocation plan, to take operating LPTV stations into consideration, and to use more of the VHF band initially for ATV allocations so as to save these local voices where possible.

Respectfully submitted,

COMMUNITY BROADCASTERS  
ASSOCIATION



James E. Dunstan  
Its Attorney

HALEY, BADER & POTTS  
Suite 900  
1450 North Fairfax Drive  
Arlington, VA 22203-1633  
703/841-0606

December 16, 1992